

ELIZABETH A. HANSON

IBLA 82-517

Decided June 29, 1982

Appeal from a decision of the California State Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas lease CA 6141.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Reinstatement: Generally

Failure to pay rental timely for an oil and gas lease is neither justifiable nor not due to a lack of reasonable diligence where the rental is mailed 9 days after the lease anniversary date and the delay in mailing is caused by the fact that the envelope containing the rental apparently slipped from a group of letters appellant was taking to the post office for mailing.

APPEARANCES: Elizabeth A. Hanson, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Elizabeth A. Hanson appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated January 15, 1982, denying her petition for reinstatement of oil and gas lease CA 6141. In this decision, BLM notified appellant that lease CA 6141 had terminated automatically by operation of law on July 1, 1981, upon appellant's failure to pay the annual rental for this lease on or before its anniversary date. 30 U.S.C. § 188(b) (1976).

Rental was received by the State Office on July 13, 1981, with the following letter, which the State Office correctly regarded as a petition for reinstatement.

I am sick about sending this payment in late but I was on my way to the post office with several bills I had made out and evidently this slipped over the side unobserved by me. I just found it today when I cleaned my car -- Please accept the payment -- I don't want the lease terminated --.
[Emphasis in original.]

In its January 15, 1982, decision, BLM found that appellant's actions did not demonstrate that her failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. The standard applied by BLM is set forth in 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c).

In her statement of reasons on appeal, appellant contends that she used reasonable diligence in mailing her rental payment on time, driving 2 miles to deposit her check with the post office. She believed that the letter containing her rental check was with other letters which were mailed. Appellant states that she did not check to see if her BLM payment was in the group of letters to be mailed and suggests that to have done so would have been compulsive and excessive.

Regulation 43 CFR 3108.2-1(c) states in part:

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment.

This Board has on several occasions held that the mailing of a rental payment 1 day before its due date does not constitute reasonable diligence. Reid E. Motley, 43 IBLA 360 (1979); Nevada Western Oil Co., 30 IBLA 379 (1977); Joseph Wachter, 22 IBLA 95 (1975). Where, as here, the rental payment is not mailed until 9 days after its due date, a similar holding is compelled.

There remains the question whether the facts in appellant's case provide justification for her tardy payment. A failure to exercise reasonable diligence in payment of rental is justifiable when caused by a factor which is ordinarily outside the control of the lessee, and occurring in close proximity to the lease anniversary date. Hildred W. Bernthal, 30 IBLA 18, (1977). The word "justifiable" refers to a limited number of instances, where owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met. What is clearly not covered are instances of forgetfulness, simple inadvertence, or ignorance of the regulations. Hildred W. Bernthal, *supra*. Appellant's failure to make a timely rental payment can at best be described as the result of inadvertence on her part without the intervention of factors outside her control. As such, it does not amount to justification.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

